

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Case No.:

PENNSYLVANIA NATIONAL)
MUTUAL CASUALTY INSURANCE)
COMPANY,)

Plaintiff,)

v.)

SHARPE IMAGES, INC.,)
NEXTPLANS, LLC, CAROLINAS)
AGC, INC. AND EUCLID GROUP,)
INC., GOODRICH HENDRY, LLC,)
AND ASSOCIATED BUILDERS AND)
CONTRACTORS OF THE)
CAROLINAS,)

Defendant.

**COMPLAINT FOR DECLARATORY
JUDGEMENT**

NOW COMES the plaintiff, Pennsylvania National Mutual Casualty Insurance Company (hereinafter Penn National) by and through its attorneys and for this complaint against the defendants alleges and says:

Jurisdiction

1. Penn National is a Pennsylvania corporation with its principle place of business in the state of Pennsylvania and is authorized to do business in the state of North Carolina among other places conducts business in Mecklenburg County, North Carolina.
2. Defendant Sharpe Images, Inc. (hereinafter Sharpe Images) is a corporation existing under the laws of the State of North Carolina with its principle place of business in Winston Salem, North Carolina.
3. Defendant Nextplans, LLC (hereinafter Nextplans) is a limited liability company existing under the laws of the State of North Carolina with its principle place of business in Winston Salem, North Carolina.
4. Carolinas AGC, Inc. (hereinafter Carolinas AGC) is a not for profit corporation existing under the laws of the state of North Carolina with its principle place of business in Charlotte, North Carolina.

5. Euclid Group, Inc. (hereinafter Euclid) is a corporation existing under the laws of the state of North Carolina with its principle place of business in Charlotte, North Carolina.
6. Goodritch Hendry, LLC (hereinafter Hendry) is a limited liability company existing under the laws of the State of North Carolina with its principle place of business in Charlotte, North Carolina.
7. Associated Builders and Contractors of the Carolinas (hereinafter Associated Builders) is a non-profit corporation existing under the laws of the state of North Carolina with a principle place of business in Raleigh, North Carolina.
8. This Court has jurisdiction over the parties and subject matter jurisdiction pursuant to 28 U.S.C. § 1332, based upon the diversity of citizenship of the parties and fact that the matter in controversy is in excess of Seventy Five Thousand Dollars (\$75,000.00).
9. This is an action for declaratory relief pursuant to 28 U.S.C. § 2201, *et. seq.*
10. Penn National seeks a declaration by this Court concerning the rights' and obligations of Penn National under a policy of insurance issued to Sharpe Images with respect to Penn National's duty to defend and or indemnify Sharpe Images and Nextplans from a lawsuit brought by defendants Carolinas AGC and Euclid Group.

Venue

11. This action properly lies in the United States District Court for the Western District of North Carolina pursuant to 28 U.S.C. § 1391(a).

Factual Background

12. Upon information and belief defendants Carolinas AGC and Associated Builders are competing professional organizations working with the construction industry in the Carolinas.
13. Both Carolinas AGC and Associated Builders each have an online plan room accessible by their membership a for fee. Members can utilize the plan room to obtain leads on projects, plans, specifications and other trade association benefits.
14. Carolinas AGC operates its plan room by and through its wholly owned subsidiary Euclid Group.
15. Associated Builders, upon information and belief, operates its online plan room through Sharpe Images and its wholly owned subsidiary NextPlans.

16. Penn National issued to the Sharpe Company and Sharpe Images, Inc. a commercial business policy number of BP9 0644574 with a policy period of January 1, 2009 through January 1, 2010. A genuine copy of the commercial business policy is attached hereto as **Exhibit A** and is incorporated by reference as if fully set forth herein.
17. On October 13, 2010 defendants Carolinas AGC and Euclid Group instituted an action in the Superior Court of Mecklenburg County, North Carolina against defendants Goodritch Hendry, LLC, Sharpe Images, Nextplans and Associated Builders. A true and accurate copy of the amended complaint with its exhibits is attached hereto as **Exhibit B** and is incorporated by reference as if fully set forth herein.
18. Among other allegations, Carolinas AGC and Euclid Group accuse the remaining defendants of improperly taking proprietary information from their online plan room to be utilized in Associated Builder's competing plan room.
19. Among other allegations, defendants Carolinas AGC and Euclid Group have alleged that all of the defendants in concert committed the following causes of action:
 1. Fraud in that they misrepresented to Carolinas AGC and Euclid Group the purpose of Goodritch Hendry's membership in Carolinas AGC plan room for the purposes of improperly obtaining proprietary information;
 2. Conducted a Trade Secret Act violation under North Carolina Law by improperly obtaining proprietary information from Carolinas AGC's online plan room;
 3. Committed an unfair trade practice pursuant to N.C.G.S. 75-1.1 *et seq.* by improperly obtaining proprietary information from Carolinas AGC's online plan room by fraudulent means;
 4. Owe to Carolinas AGC and Euclid Group a quantum meruit recovery for the improperly obtained proprietary information;
 5. Improperly interfered with Carolinas AGC's and Euclid Group's prospective economic advantage;
 6. Goodritch Hendry, Sharpe Images, Nextplans and Associated Builders entered into a civil conspiracy to improperly obtain proprietary information from Carolina's AGC and Euclid Group; and
 7. Goodritch Hendry, Sharpe Image, Nextplans and Associated Builders be enjoined from further access to Carolinas AGC's online plan room.
20. Penn National contends that the policy it issued to Sharpe Images does not extend coverage to its wholly owned subsidiary Nextplans.
21. Penn National contends that the policy it issued to Sharpe Images provides no

indemnify obligation nor duty to defend in connection with any possible claim that could be found against it pursuant to the complaint of Carolinas AGC and Euclid Group attached hereto as **Exhibit B**.

22. Penn National contends that there is no coverage under the policy in question for the following reasons:

- a. That one or more of the acts alleged in the amended complaint occurred outside of the applicable policy period.
- b. Nextplans is not a named insured on the declarations page or the applicable policy. Further, Nextplans fails to meet any of the definitions of an insured under the policy. Lastly, limited liability companies are specifically excluded as an insured under the policy.
- c. The claims in the AGC/Euclid amended complaint do not constitute an "occurrence" as that term is defined in the policy or under North Carolina Law; further the policy requires any "property damage", "personal injury" or "advertising injury" to be a result of an "occurrence";
- d. That the alleged losses of Carolinas AGC and Euclid Group do not constitute loss of tangible property and therefore do not meet the definition of property damage under the policy;
- e. Fraud is an intentional act (see exclusion 1.a).
- f. The equitable relief of quantum meruit is based on alleged intentional acts. Further, the equitable relief of quantum meruit is not covered under a commercial liability policy.
- g. The equitable relief in the form of injunctions sought by Carolinas AGC and Euclid Group are beyond the scope of the commercial liability policy and not covered.
- h. The Trade Secrets Act violation pursuant to N.C.G.S. 66-155 et. seq. requires an intentional act which is barred from coverage.
- i. Any claims against Sharpe Images in the amended complaint of Carolinas AGC and Euclid Group do not constitute an advertising injury as the allegations fail to meet the definition of an advertising injury and are excluded by exclusions P and Q;
- j. The allegations of the complaint of Carolinas AGC and Euclid Group of an unfair and deceptive trade practice violation pursuant to N.C.G.S. 75-1.1 et seq. require and are based upon an intentional act;
- k. The allegations of the complaint of Carolinas AGC and Euclid Group that Sharpe Images interfered with their prospective economic advantage are based upon an intentional and malicious act therefore barring coverage; and
- l. The allegations in the complaint of Carolinas AGC and Euclid Group that Sharpe Images along with the other remaining Defendants entered into a civil conspiracy do not trigger coverage under the applicable policy because there is no independent cause

of action for civil conspiracy under North Carolina Law and the Court must look to an underlying wrongful act. All of the above mentioned wrongful acts are outside the coverage of the applicable policy.

Declaratory Relief Sought

23. Upon information and belief defendants Sharpe Images and Nextplans contend that they are entitled to indemnification and/or a defense under Penn National's policy.
24. A real and justiciable controversy exists between and among the parties to this action concerning coverage afforded by Penn National pursuant to the policy at issue and the plaintiff is entitled to a declaratory judgment as to its obligations under said policy.
25. Penn National alleges and contends it is entitled to a judgement declaring it owes no duty to defend Sharpe Images or Nextplans from the lawsuit filed by Carolinas AGC, Inc. and Euclid Group attached hereto as Exhibit B.

WHEREFORE, Penn National prays for the following relief:

1. That the Court declare Sharpe Images and Nextplans are not entitled to indemnification or a defense under the Penn National policy (Exhibit A).
2. That Penn National have and recover its costs in this action.
3. For such other further equitable, legal and declaratory relief as the Court deems just and proper.

This the 28th day of March 2011.

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